

Merit Systems Protection Board

§ 1210.17

each party must, without awaiting a discovery request and within ten calendar days following the date of the Board's acknowledgment order, provide the following information to the other party:

(1) The Department must provide:

(i) The Departmental record required by 5 CFR 9701.612; and

(ii) The name, work address and work telephone number, if known, of each individual likely to have discoverable information that the Department may use in support of its claims or defenses, identifying the subjects of such information.

(2)(i) The appellant must provide:

(A) A copy of, or a description by category or location of all documents in the possession, custody or control of the appellant that the appellant may use in support of his or her claims or defenses; and

(B) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the appellant may use in support of his or her claims or defenses, identifying the subjects of the information.

(ii) The name, address and telephone number, if known, of each individual likely to have discoverable information that the appellant may use in support of his or her claims or defenses, identifying the subjects of the information. Each party must make its initial disclosure based on the information then reasonably available to the party. Each party has an ongoing obligation to supplement and update its initial disclosure as relevant documents and information are discovered or become available. A party is not excused from making its disclosures because it has not fully completed the investigation of its case, because it challenges the sufficiency of the other party's disclosures or because the other party has not made its disclosures.

(b) *Scope of discovery.* The parties may seek discovery regarding any matter that is relevant to any of their claims or defenses. However, by motion, either party may seek to limit such discovery because the burden or expense of providing the material outweighs its benefit, or because the material sought is privileged, not relevant,

unreasonably cumulative or duplicative, or can be secured from some other source that is more convenient, less burdensome, or less expensive.

[72 FR 56885, Oct. 5, 2007, as amended at 73 FR 21023, Apr. 18, 2008]

§ 1210.15 Discovery procedures.

(a) *Responses to discovery requests.* Prior to filing a motion to limit discovery, the parties must confer and attempt to resolve any pending objection(s). To the extent not inconsistent with this subpart, and subject to modified time limits and procedures that may be set by the adjudicating official, the provisions of 5 CFR 1201.71 through 1201.85 govern discovery in cases under this subpart.

(b) *Limitations on discovery.* (1) Neither party may submit more than one set of interrogatories, one set of requests for production of documents, and one set of requests for admissions. The number of interrogatories or requests for production or admissions may not exceed 25 per pleading, including subparts. In addition, neither party may conduct/compel more than 2 depositions.

(2) Either party may file a motion requesting additional discovery. Such motion may be granted only if the party has shown necessity and good cause to warrant such additional discovery.

§ 1210.16 Intervention.

The Director may, as a matter of right at any time in the proceeding, intervene or otherwise participate in any proceeding under this Part in any case in which the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

§ 1210.17 Settlement.

(a) *Settlement discussion.* Neither an adjudicating official nor the Board may require settlement discussions in connection with any action appealed under this section. If either party decides that settlement is not desirable, the matter will proceed to adjudication. The parties are not prohibited from engaging in settlement discussions on their own.

(b) *Settlement judges.* Where the parties agree to engage in settlement discussions, these discussions will be conducted by an official specifically designated by MSPB in each case for that sole purpose. That settlement discussions are being held by the settlement judge in no way alters the authority of the adjudicating official, who will continue to process all other aspects of the appeal.

§ 1210.18 Case suspension procedures; use of the Mediation Appeals Program; refiled appeals.

(a) The parties may submit a request for additional time. Requests for such case suspensions must be submitted jointly. Upon receipt of such request, an order suspending processing of the case for a period up to 30 days may be issued at the discretion of the adjudicating official. Suspension periods granted pursuant to this procedure shall not be included when determining whether an initial decision has been issued within the 90-day period specified in section 5 CFR 9701.706(k)(7) and § 1210.21(a) of this part.

(b) If the parties agree jointly to use the Board's Mediation Appeals Program (MAP), the period within which the parties participate in MAP shall not be included when determining whether an initial decision has been issued within the 90-day period specified in 5 CFR 9701.706(k)(7) and 1201.21(a).

(c) If an appeal is refiled after it has been dismissed without prejudice, the 90-day period specified in 5 CFR 9701.706(k)(7) and 1201.21(a) restarts on the date of refiling. For purposes of this paragraph, "refiled" has the same meaning as "filed" set out in § 1210.21(a).

§ 1210.19 Right to a hearing.

(a) An employee with a right of appeal under subparts F and G of 5 CFR part 9701 generally has a right to a hearing. When the adjudicating official finds that material facts are not in dispute, he or she must issue an initial decision without conducting a hearing, as appropriate. See 1210.20(e).

(b) Where the appellant requests a hearing and summary judgment is not appropriate, the adjudicating official

may, in his or her discretion, hold the hearing in whole or in part by telephone, videoconference, or in person at the Board's regional or field office or at a designated hearing site listed at 5 CFR part 1201, Appendix III. Although the preferences of the parties and the nature of the issues to be heard and determined will inform the adjudicating official's decision, the ultimate selection rests in the sound judgment of the official. Among the factors that the adjudicating official will consider in deciding whether to hold a hearing in whole or in part by videoconference or telephone are:

(1) The costs of traveling to the hearing site as compared with the costs of traveling to a videoconferencing site;

(2) The distance the parties and their witnesses would have to travel to appear in person; and

(3) Whether appearance by videoconference or telephone of the appellant or his or her witnesses would unduly prejudice the appellant.

§ 1210.20 Summary judgment.

(a) *Motion by a party.* Any party may file a motion for summary judgment if the party believes that material facts are not in genuine dispute and that the party may be entitled to judgment as a matter of law. Each motion for summary judgment shall be accompanied by a statement separately listing all material facts as to which the moving party contends there is no genuine dispute. The statement shall include references to those parts of the record, including any affidavits, declarations under penalty of perjury, or other evidence attached to the motion, relied on to support the statement.

(b) *Opposition to motion.* An opposition to a motion for summary judgment shall be accompanied by a statement separately listing all material facts as to which the party contends there exists a genuine dispute for hearing. The statement in opposition shall include references to those parts of the record, including any affidavits, declarations under penalty of perjury or other evidence attached to the opposition, relied on to support the statement. The party opposing a motion for summary judgment may not rest on the mere allegations or denials of his